



OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

2003 NOV 18 P 2:09

DATE: November 18, 2003

DOCKET NO: T-03761A-01-0911

TO ALL PARTIES:

AZ CORP COMMISS
DOCUMENT CONTROL

Enclosed please find the recommendation of Administrative Law Judge Philip J. Dion III. The recommendation has been filed in the form of an Opinion and Order on:

TELIGENT SERVICES, INC.
(CC&N CANCELLATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **12:00 noon** on or before:

NOVEMBER 28, 2003

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Open Meeting to be held on:

DECEMBER 2 AND 3, 2003

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission
DOCKETED

NOV 18 2003

BRIAN C. MCNEIL
EXECUTIVE SECRETARY

DOCKETED BY	
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MARC SPITZER, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 TELIGENT SERVICES, INC. FOR AUTHORITY
10 TO DISCONTINUE THE PROVISION OF LOCAL
11 EXCHANGE SERVICES.

DOCKET NO.T-03761A-01-0911

DECISION NO. _____

12 **OPINION AND ORDER**

13 DATE OF HEARING:

May 15, 2003

14 PLACE OF HEARING:

Phoenix, Arizona

15 ADMINISTRATIVE LAW JUDGE:

Philip J. Dion III

16 APPEARANCES:

Roshka, Heyman & DeWulf by Michael W.
Patten on behalf of Teligent Services, Inc; and

17 Christopher C. Kempley, Chief Counsel, Legal
18 Division, on behalf of the Utilities Division of
19 the Arizona Corporation Commission.

20 **BY THE COMMISSION:**

21 Having considered the entire record herein and being fully advised in the premises, the
22 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

23 **FINDINGS OF FACT**

24 1. On October 7, 1998, in Decision No. 61155, the Commission granted to Teligent, Inc.
25 ("Teligent") a Certificate of Convenience and Necessity ("CC&N" or "Certificate") authorizing it to
26 provide competitive facilities-based and resold local exchange telecommunication services and
27 facilities-based and resold interexchange telecommunication services throughout Arizona.

28 2. On January 12, 2000, in Decision No. 62233, the Commission authorized Teligent to
transfer its CC&N to Teligent Services, Inc. ("TSI" or "Applicant"). Teligent is the parent company
of TSI.

3. On May 21, 2001, Teligent, Inc. and all of its direct and indirect subsidiaries including
TSI filed voluntary petitions for relief under Chapter 11 under the U.S. Bankruptcy Code with the

1 U.S. Bankruptcy Court to restructure Teligent's long-term debt. In that application, Teligent, Inc.'s
2 creditors stated that by December 15, 2001, Teligent and its subsidiaries would not have sufficient
3 funds to continue basic local service.

4 4. On November 16, 2001, TSI filed with the Commission an application for emergency
5 authority to discontinue the provision of local exchange service effective December 15, 2001, and for
6 approval of a waiver of A.A.C. R14-2-1107(B).¹

7 5. On November 19, 2001, the Commission's Utilities Division ("Staff") filed an Open
8 Meeting Memorandum and Proposed Order recommending denial of the waiver of A.A.C. R14-2-
9 1107(B).

10 6. On December 4, 2001, the Commission issued Decision No. 64250 which granted TSI
11 a limited waiver of A.A.C. R14-2-1107(B) subject to several conditions. In the Decision, the
12 Commission directed TSI to provide additional notice to the customers whose service would be
13 discontinued. The Commission also directed TSI to assist its customers in obtaining new service
14 from a different provider. Finally, the Commission required TSI to continue to provide service to its
15 customers until those customers received local exchange service from another provider. The
16 Decision stated that the Commission should approve TSI's application to discontinue local service
17 after all of the aforementioned conditions are met.

18 7. On December 10, 2001, TSI filed a letter to the Director of the Utilities Division
19 verifying that it had provided the additional required notice to all of its local exchange service
20 customers in Arizona and provided a copy of the notice.

21 8. On January 11, 2002, Staff filed its Staff Report in this matter. Staff recommended
22 approval of Applicant's request to discontinue local exchange service. Staff also recommended that
23 TSI's CC&N to provide local exchange service be rescinded.

24 9. In Staff Report, Staff stated that TSI has fully complied with Decision No. 64250 and,
25 to Staff's knowledge, all of TSI's local service customers were transitioned to another service
26 provider without an interruption of service.

27
28 ¹ TSI did not request to discontinue service to its long distance customers.

1 10. On February 8, 2002, Applicant filed exceptions to the Staff Report. Applicant
2 requested that Staff reconsider its decision to recommend the cancellation of Applicant's Certificate
3 to provide local exchange services.

4 11. On August 1, 2002, the Commission issued a Procedural Order that ordered Applicant
5 to file a memorandum by August 21, 2002 updating the Commission regarding Teligent's
6 Bankruptcy Court proceedings.

7 12. On August 20, 2002, Applicant filed a memorandum stating that the Bankruptcy Court
8 had set a hearing to formally consider Teligent's plan of reorganization for September 5, 2002.
9 Applicant stated that it would provide the Commission further updated information about the
10 September 5, 2002 hearing as soon as possible.

11 13. On September 12, 2002, Applicant filed with the Commission an additional
12 memorandum regarding Teligent's plan of reorganization and reemergence from bankruptcy. In the
13 memorandum, the Applicant stated that the Bankruptcy Court confirmed Teligent's plan of
14 reorganization on September 5, 2002. Applicant stated that Teligent and its subsidiaries will emerge
15 from Chapter 11, fully funded, carrying no debt, and anxious to begin growing the services it has
16 provided throughout the Chapter 11 process.

17 14. On January 21, 2003, by Procedural Order, Staff was ordered to file an amended Staff
18 Report addressing TSI's reemergence from bankruptcy.

19 15. On February 14, 2003, Staff filed an amended Staff Report again recommending
20 Applicant's Certificate be rescinded.

21 16. On March 14, 2003, Applicant filed a Request for Hearing.

22 17. On March 18, 2003, by Procedural Order, a hearing was scheduled for May 15, 2003.

23 18. On May 15, 2003, the hearing in this matter was held as scheduled. TSI appeared and
24 was represented by counsel. Staff also appeared and was represented by counsel. During the
25 hearing, testimony was taken and exhibits were entered into the record. At the conclusion of the
26 hearing, the matter was taken under advisement.

27 19. James Continenza, CEO and President of Teligent testified on behalf of TSI. Mr.
28 Continenza stated that Teligent and its subsidiaries had reemerged from Chapter 11 Bankruptcy debt

1 free and that Teligent had been infused with approximately \$20 million in cash. Mr. Continenza
2 further testified that Teligent has enough cash to support its operations until the company breaks even
3 which he expects to occur within the next 36 to 48 months.

4 20. Mr. Continenza testified that Teligent and TSI now have a stable financial condition
5 and that their business is growing.

6 21. TSI is relying on its parent, Teligent, for its financial stability.

7 22. Mr. Continenza stated that Teligent's new business model is focused on acquiring
8 clients prior to building or leasing facilities. He stated that prior to the bankruptcy, the old Teligent
9 had approximately \$1.8 million in debt and that the majority of that money was used to build out
10 networks and/or make acquisitions of other companies. Mr. Continenza stated that the old Teligent
11 built a network with the expectation that customers would follow. He said that Teligent is now
12 following a model where, before any facilities are bought or leased, Teligent first acquires the
13 customer(s) so that as soon as the facilities are built or leased, Teligent starts to make money or, at a
14 minimum, recognizes an immediate cash flow. He stated that Teligent is no longer, "building it and
15 hope they will come. We are building it when we know they require it and need it."²

16 23. Mr. Continenza testified that the new business plan requires Teligent to have the
17 ability to return to the Arizona market in the future, as Teligent needs speed and flexibility when
18 addressing the telecommunication needs of its clients.

19 24. Mr. Continenza testified that Teligent previously had approximately 300 employees,
20 but now has only approximately 50 employees. He testified that his staff is "well-talented"³ and
21 includes managers and individuals who have a great deal of experience in the telecommunications
22 industry.

23 25. Mr. Continenza testified that Teligent is currently providing telecommunication
24 services in 46 states; such services include long distance, conferencing, toll free and private line
25 services. Teligent is not providing any local telecommunications services in any market at this time.

26 26. Mr. Continenza stated that TSI currently serves 57 long-distance customers and 2

27 ² Transcript at page 65.

28 ³ Transcript at page 38.

1 private-line customers in Arizona.

2 27. Mr. Continenza testified that no other states in which Teligent or TSI is certificated
3 sought to cancel their CC&N(s).

4 28. Mr. Continenza stated that TSI could not state when it expects to commence local
5 exchange service in Arizona as it would depend on TSI's customers' needs.

6 29. TSI argued that if its CC&N were revoked and it was forced to apply for a new
7 CC&N, the delay inherent in obtaining the CC&N would seriously hinder its ability to acquire new
8 customers as speed is of the essence to its customers in establishing telecommunications services.
9 TSI further argued that the Commission does not currently require, as a condition of granting a
10 company a CC&N, a company to actually provide service within a certain timeframe when a CC&N
11 is granted.

12 30. Mr. Continenza stated that, although a majority of TSI's facilities in Arizona have
13 been sold, TSI would be able to quickly acquire, either through building or leasing, the necessary
14 equipment to provide local service in Arizona in a relatively short period of time.

15 31. TSI argued that pursuant to A.A.C. R14-2-1107, TSI simply needed to adequately
16 publish notice of its application and, subject to the Commission's approval, TSI could then
17 discontinue its local telecommunication services in Arizona. TSI argued that it went beyond the
18 requirements of the Rule by mailing notice to all of its local exchange customers in Arizona using 2-
19 day delivery service with tracking and signature required. TSI noted that with the assistance of
20 Qwest Corporation and Staff, TSI was able to transition all its customers to another provider without
21 an interruption of service to its customers.

22 32. Mr. Continenza stated that if TSI is allowed to retain its CC&N, TSI would agree to
23 comply with the standard conditions imposed on companies that apply for the authorization to
24 provide local telecommunications services in Arizona, including the posting of a bond.

25 33. Linda Jaress, an executive consultant with the Utilities Division of the Commission,
26 testified on behalf of Staff.

27 34. Ms. Jaress stated that Staff believes that TSI has fully complied with the
28 Commission's Decision No. 64250, and admitted that no formal complaints were filed with the

1 Commission regarding TSI's discontinuation of service.

2 35. Ms. Jaress stated that TSI did not collect any prepayments, advances, or deposits from
3 its customers and that, in the process of discontinuing local service, none of TSI's customer deposits,
4 prepayments or advances were at risk.

5 36. Ms. Jaress stated that, although the evidence presented by TSI in this matter would not
6 prevent it from receiving a new CC&N in a separate proceeding, Staff is still concerned about TSI's
7 financial strength, especially in light of Teligent and TSI's recent bankruptcy.

8 37. Ms. Jaress argued that, although TSI worked with Staff to transition its customers to
9 other service providers, since TSI discontinued service, it is appropriate for the Commission to
10 revoke the company's Certificate to provide local telecommunication services in Arizona.

11 38. In response to TSI's argument that that the Commission does not currently require, as
12 a condition of granting a company a CC&N, a company to actually provide service within a certain
13 timeframe when a CC&N is granted, Staff argued that the Commission does require a company to file
14 conforming tariffs within 365 days from effective date of a Decision or 30 days prior to providing
15 service, whichever occurs first. Staff also noted that the Commission's language in approving new
16 CC&Ns includes a provision that states, if a company does not timely file its conforming tariffs, then
17 the CC&N becomes null and void without further Order of the Commission. Therefore, Staff argued
18 that the Commission would not include such language unless it intended that the company provide
19 service to Arizona customers in a timely manner.

20 39. Staff also argued that TSI had disposed of a substantial number of its assets that were
21 used to provide local exchange service, and the company has not stated when it would re-enter the
22 Arizona market. Staff recommended that TSI's Certificate be rescinded and if at some point in the
23 future TSI intended to provide service to Arizona, it could simply file a new application to re-obtain
24 its Certificate.

25 40. TSI argued that initially it came to the Commission seeking a discontinuance of
26 service for the potential problems arising from bankruptcy and seeking modification of the
27 Commission's notice of requirements. TSI argued that it met the obligations under Decision No.
28 64250 and that Staff has recognized that fact. TSI stated that it dealt with a very difficult financial

1 situation and instead of simply dropping service, TSI contacted the Commission and worked with the
 2 Commission in order to insure that its customers had proper notice and could be successfully
 3 transferred to other providers. TSI has stated that Staff did not set forth any express reasons pursuant
 4 to A.A.C. R14-2-1106 to cancel to its CC&N. TSI argued that based upon the information presented
 5 in the hearing regarding TSI's financial condition and technical expertise, it would be in the interest
 6 of competition to allow TSI to retain its Certificate instead of making it go through the process and
 7 the delay associated with reacquiring a Certificate.

8 41. A.A.C. R14-2-1107 allows a telecommunications company to discontinue service, but
 9 retain its CC&N.

10 42. We find that TSI's request to discontinue local service should be granted and that it
 11 should be able to retain its CC&N to provide facilities-based and resold local exchange in Arizona
 12 subject to some conditions.

13 43. We further find that TSI continues to have the technical expertise necessary to provide
 14 local telecommunications services in Arizona. It acted responsibly to notify the Commission and its
 15 customers when it needed to discontinue service. No formal complaints were made by its customers.
 16 TSI has a new customer acquisition strategy that recognizes its current financial condition. The
 17 requirement that TSI post a performance bond adequately addresses Staff's concern about TSI's
 18 financial strength and will help protect TSI's customers should TSI again find itself in financial
 19 difficulty.

20 44. We find that TSI's Certificate to provide competitive facilities-based and resold local
 21 exchange telecommunications services should remain in effect subject to the following conditions:

- 22 (a) that, unless it provides services solely through the use of its own facilities,
 23 Applicant be ordered to procure an Interconnection Agreement, within 365
 24 days of the effective date of the Order in this matter or 30 days prior to the
 25 provision of service, whichever comes first, that must remain in effect until
 further order of the Commission, before being allowed to offer local exchange
 service;
- 26 (b) that Applicant be ordered to file with the Commission, within 365 days of the
 27 effective date of the Order in this matter or 30 days prior to the provision of
 28 service, whichever comes first, its plan to have its customers' telephone
 numbers included in the incumbent's Directories and Directory Assistance
 databases;

- 1 (c) that Applicant be ordered to pursue permanent number portability
2 arrangements with other LECs pursuant to Commission rules, federal laws and
3 federal rules;
- 4 (d) that Applicant be ordered to abide by and participate in the AUSF mechanism
5 instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-T-
6 00000A-00-95-0498);
- 7 (e) that Applicant be ordered to abide by the quality of service standards that were
8 approved by the Commission for Qwest in Docket No. T-0151B-93-0183;
- 9 (f) that in areas where it is the sole provider of local exchange service facilities,
10 Applicant be ordered to provide customers with access to alternative providers
11 of service pursuant to the provisions of Commission rules, federal laws and
12 federal rules;
- 13 (g) that Applicant be ordered to certify, through the 911 service provider in the
14 area in which it intends to provide service, that all issues associated with the
15 provision of 911 service have been resolved with the emergency service
16 providers within 365 days of an Order in this matter or 30 days prior to the
17 provision of service, whichever comes first, which certification must remain in
18 effect until further Order of the Commission;
- 19 (h) that Applicant be ordered to abide by all the Commission decisions and
20 policies regarding CLASS services;
- 21 (i) that Applicant be ordered to provide 2-PIC equal access;
- 22 (j) that Applicant be required to notify the Commission immediately upon
23 changes to its address or telephone number;
- 24 (k) that Applicant be ordered to comply with all Commission rules, orders, and
25 other requirements relevant to the provision of intrastate telecommunications
26 service;
- 27 (l) that Applicant be ordered to maintain its accounts and records as required by
28 the Commission;
- (m) that Applicant be ordered to file with the Commission all financial and other
reports that the Commission may require, and in a form and at such times as
the Commission may designate;
- (n) that Applicant be ordered to maintain on file with the Commission all current
tariffs and rates, and any service standards that the Commission may require;
- (o) that Applicant be ordered to cooperate with Commission investigations
including, but not limited to customer complaints; and
- (p) Applicant be ordered to participate in and contribute to a universal service
fund, as required by the Commission.

45. We further find that TSI's CC&N to provide facilities-based and resold local exchange
telecommunications services should remain in effect subject to the following conditions:

- 1 (a) TSI be ordered to file conforming tariffs within 365 days from the date of an
2 Order in this matter or 30 days prior to providing service, whichever occurs
3 first, and in accordance with the Decision;
- 4 (b) In order to protect TSI's customers:
- 5 (1) TSI should be ordered to procure a performance bond equal to \$125,000.
6 The minimum bond amount of \$125,000 should be increased if at any time
7 it would be insufficient to cover prepayments or deposits collected from
8 TSI's customers. The bond amount should be increased in increments of
9 \$62,500 whenever the total amount of the advances, deposits and
10 prepayments is within \$12,500 of the bond amount;
- 11 (2) TSI should docket proof of the performance bond within 365 days of the
12 effective date of an Order in this matter or 30 days prior to the provision of
13 service, whichever comes first, and must remain in effect until further
14 Order of the Commission;
- 15 (3) TSI should be required to notify each of its local exchange customers and
16 the Commission 60 days prior to filing an application to discontinue
17 service pursuant to A.A.C. R14-2-1107; and any failure to do so should
18 result in forfeiture of the Applicant's performance bond; and
- 19 (4) if TSI desires to discontinue service, it should be required to file an
20 application with the Commission pursuant to A.A.C. R14-2-1107;
- 21 (c) If any of the above timeframes are not met, that TSI's CC&N should become
22 null and void without further Order of the Commission and no extensions for
23 compliance should be granted.

24 46. We further find that based upon the circumstances in this case, namely TSI informing
25 the Commission of its financial difficulties; its compliance with Decision 64250 regarding notice to
26 its customers and the transition of service of its customers; combined with TSI's reemergence from
27 bankruptcy, warrant TSI an opportunity to continue serving customers in Arizona. Although TSI
28 created a difficult situation for its local telecommunications customers in filing for bankruptcy, it
acted responsibly in informing the Commission of its financial difficulties and in its actions to
transition its customers.

47. We further find that although Decisions granting new CC&N's for telecommunication
services in Arizona do not require the applicant to provide service in Arizona by a certain time,
inherent in such a request is a commitment to serve customers in Arizona in the near future.
Therefore, Teligent's Certificate to provide facilities-based and resold local exchange
telecommunication services in Arizona will remain in effect contingent upon TSI actually serving

1 customers in Arizona within two years of the effective date of the Decision in this case, and TSI
2 making a filing with Docket Control stating when it first began providing local telecommunications
3 service to customers in Arizona within 30 days of providing such service. If TSI does not serve any
4 customers in Arizona within that timeframe, or make the appropriate filing to request an extension,
5 then the authority to provide facilities-based and resold local exchange telecommunication services in
6 Arizona granted in this Decision will be null and void without further Order of the Commission, and
7 TSI will have to file a new application with the Commission if its intends to provide those services at
8 a later date.

9 CONCLUSIONS OF LAW

10 1. Applicant is a public service corporation within the meaning of Article XV of the
11 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

12 2. The Commission has jurisdiction over Applicant and the subject matter of the
13 application.

14 3. TSI should be allowed to discontinue its facilities-based and resold local exchange
15 telecommunications services.

16 4. The cancellation of TSI's CC&N is not in the public interest.

17 5. TSI has complied with Decision No. 64250 (December 4, 2001) and A.A.C. R14-02-
18 1107. Notice of the application was given in accordance with the law.

19 6. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised
20 Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth
21 in this Decision.

22 7. Applicant is a fit and proper entity to retain its Certificate authorizing it to provide
23 competitive facilities-based and resold local exchange telecommunications services in Arizona as
24 conditioned in this Decision.

25 8. The telecommunications services that the Applicant intends to provide are competitive
26 within Arizona.

27 9. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,
28 it is just and reasonable and in the public interest for Applicant to establish rates and charges that are

not less than the Applicant's total service long-run incremental costs of providing the competitive services approved herein.

ORDER

IT IS THEREFORE ORDERED that the application of Teligent Services, Inc. for the discontinuance of its facility-based and resold local exchange telecommunications services in Arizona, is hereby approved.

IT IS FURTHER ORDERED that Teligent Services, Inc.'s Certificate of Convenience and Necessity for facilities-based and resold local exchange telecommunication services in Arizona is valid, subject to the conditions set forth above.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2003.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

PD:mlj

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